IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITR No.76 of 1998
Date of decision:31.10.2006

Commissioner of Income tax, Ludhiana

....Petitioner

versus

M/s. Gupta Bricks Co.Sandhuana (Moga)

....Respondent

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. SK Garg Narwana, Advocate, for the Revenue.

JUDGMENT:

Following question of law has been referred for the opinion of this Court by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (for short, 'the Tribunal') arising out of its order dated 31.10.1997 in ITA No.434(ASR)/1991, for the assessment year 1988-89:-

> "Whether, on the facts and in the circumstances of the case, the ITAT was right in law in upholding the order of the CIT(A) deleting the addition of Rs.37,500/- made in firm's hand on account of unexplained cash credits in the capital accounts of the partners, as appearing in the books of accounts maintained by the firm?"

During the assessment, cash credit entries in the names of partners Balbir Singh and Smt.Surinder Kaur were treated as unexplained investments in the hands of the firm. On appeal, the Commissioner of Income tax (Appeals) set aside the addition by holding that the assessee's explanation was that Balbir Singh had raised a loan from one Joginder Singh vide demand draft No.PWA-074981 dated 8.11.1986 which was advanced out of his agricultural income and Smt.Surinder Kaur was working as Staff nurse in Government TB Hospital, Solan and had advanced the amount out of her savings. The Tribunal upheld the said view. The

Tribunal held that entries were appearing in the names of the partners and if no explanation was offered by the assessee, addition should have been made in the hands of the partners and not in the name of the firm.

We have heard learned counsel for the revenue.

The finding recorded by the Tribunal is primarily a finding of fact. The CIT(A) as well as the Tribunal was satisfied with the explanation furnished by the assessee. Learned counsel for the revenue could not point out any evidence/material on record, which has not been considered by the authorities below. It has not been shown that the reasons given by the Tribunal are, in any manner, irrelevant or non-existent. The finding cannot be held to be perverse.

The question referred is, thus, answered against the revenue and in favour of the assessee.

Reference is disposed of accordingly.

(Adarsh Kumar Goel)
Judge

October 31, 2006
'gs'

(Rajesh Bindal)
Judge